

SELECTED READINGS  
ON  
THE ORIGINS OF  
RELIGIOUS LIBERTY IN AMERICA

- Elisha Williams, *The Essential Rights And Liberties Of Protestants: A Seasonable Plea For The Liberty Of Conscience And The Right Of Private Judgment In Matters Of Religion Without Any Controul From Human Authority* (Boston 1744) [Excerpts].
- Issac Backus, *An Appeal To The Public For Religious Liberty* (Boston 1773) [Excerpts]
- Thomas Jefferson, *A Bill For Establishing Religious Freedom* (1779)
- James Madison, *Memorial And Remonstrance Against Religious Assessments* (June 20, 1785)
- The U.S. House Of Representatives, *Debates On Amendments To The Constitution* (1789) [Excerpts]
- John Leland, *The Rights Of Conscience Inalienable* (New London 1791) [Excerpts]

Harry F. Tepker  
Calvert Chair of Law and Liberty  
& Professor of Law  
University of Oklahoma

--  
United States Tenth Circuit  
Bar and Bench Conference  
Colorado Springs, Colorado  
September 2006

ELISHA WILLIAMS  
THE ESSENTIAL RIGHTS AND LIBERTIES OF PROTESTANTS:  
*A seasonable Plea for The Liberty of Conscience and the Right of private Judgment in Matters of Religion  
Without any Controul from human Authority  
(Boston 1744) 1*

The members of a civil state do retain their natural liberty or right of judging for themselves in matters of religion. Every man has an equal right to follow the dictates of his own conscience in the affairs of religion. Every one is under an indispensable obligation to search the scripture for himself . . . and to make the best use of it he can for his own information in the will of God, the nature and duties of Christianity. And as every Christian is so bound so he has an unalienable right to judge the sense and meaning of I, and to follow his judgment wherever it leads him; even an equal right with any rulers be they civil or ecclesiastical. This I say, I take to be an original right of the humane nature, and so far from being given up by the individuals of a community that it cannot be given up by them if they should be so weak as to offer it.

\*\*\*\*

A man may alienate some branches of his property and give up his right in them to others; but he cannot transfer his rights of conscience, unless he could destroy his rational and moral powers, or substitute some other to be judged for him at the tribunal of God." This is a truth of too great importance for a Christian ever in any measure to give up; and is so clear and obvious a truth, as may well pass for a self-evident maxim, That a Christian is to receive his Christianity from Christ alone. For what is it which is necessarily implied and supposed in the very notion of a Christian but this, that he is a follower and disciple of Christ, one who receives and professes to believe his doctrines as true, and submits to his commands? And so far only as any does this, is he a Christian: and so far therefore as he receives or admits any other doctrines or laws, is he to be denominated from that person or sect, from whose authority or instruction he receives them.

\*\*\* \*

The next corollary I shall deduce from the principles before laid down, is, That the civil authority have no power to establish any religion (i.e. any professions of faith, modes of worship, or church government) of a human form and composition, as a rule binding to Christians; much less may they do this on any penalties whatsoever. Religion must remain on that foot where Christ has placed it. He has fully declared his mind as to what Christians are to believe and do in all religious matters: And that right of private judgment belonging to every Christian evidenced in the preceeding pages, necessarily supposes it is every one's duty, priviledge and right to search the sacred writings as Christ has bid him, and know and judge for himself what the mind and will of his only Lord and master is in these matters. It does, I think, from hence follow, that no order of men have any right to establish any mode of worship, &c. as a rule binding to particular Christians. For if they may, then Christians are abridg'd or rather striped of their right, which is to involve our selves in a contradiction. . . .

\*\*\*\*

[T]o carry the notion of a religious establishment so far as to make it a rule binding to the subjects, or on any penalties whatsoever, seems to me to be oppressive of Christianity, to break in upon the sacred rights of conscience, and the common rights and priviledges of all good subjects. For let it be supposed as now pleaded, that the clergy or a synodical assembly draw up the articles and form of religion, agreeable in their judgment to the sacred scriptures, and the reception of the same be made binding by the civil authority on their subjects; It will then follow, That all such establishments are certainly right and agreeable to the sacred scriptures. For it is impossible to be true that any can have right or authority to oblige Christians to believe or

---

<sup>1</sup> Republished in Ellis Sandoz, ed., *1 Political Sermons of the Founding Era, 1730-1805*, at 51-118 (Liberty Fund 1998). [<http://oll.libertyfund.org/ToC/0018.php>]

practice any thing in religion not true or not agreeable to the word of God: Because that would destroy the sacred scriptures from being the only rule of faith and practice in religion to a Christian. If the sacred scriptures are his rule of faith and practice, he is oblig'd and that by God himself, to believe and practice accordingly. No man therefore, or order of men can have any right or power to oblige the Christian to believe or do any thing in religion contrary to, or different from, what God has obliged him: The position of the one is the removal of the other. This then is certain, that if this proposition be true, that a humane religious establishment is a rule binding to Christians, or that the civil authority have power to oblige their subjects to receive them; then they are always right and agreeable to God's word; but the latter is not true; therefore the proposition is false. Humane establishments in matters of religion, carry in them no force or evidence of truth. They who make them are no ways exempt from humane frailties and imperfections: They are as liable to error and mistake, to prejudice and passion, as any others. And that they have erred in their determinations, and decreed and established light to be darkness, & darkness to be light, that they have perplexed the consciences of men, and corrupted the simplicity of the faith in Christ, many councils and synods and assemblies of state are a notorious proof. . . .

\*\*\*\*

If it be still demanded; "But have not these synods who draw up these establishments out of the scriptures, or the civil authority with them, a right to judge of the sense and meaning of the scripture in those matters, and so determine what shall or shall not pass for true, and be received by the members of the community[?]" I know some plead for such a power: And I think if a human religious establishment can be a binding rule to Christians; they must, either a synod, or civil authority, or both together, have power to determine the sense of scripture as now pleaded for: and if they have no such power, it is most evident their establishments can be no binding rule to Christians. But this is certain, they have no such power: The pretence to it is a spice of that Antichristianism that ought to be banished out of the world. For that this very supposition removes the sacred scriptures from being a rule of faith and practice to private Christians, and sets up humane determinations instead of them; inasmuch as that from which the Christian receives his information what he is to believe & do, is evidently the rule of faith & practice in those particular cases at least; and in the present supposed case, he is to receive his information from a human determination. The scriptures therefore are struck out from being a rule of faith and practice to private Christians; and human determinations substituted in their room. However the scriptures may be supposed or pretended to be the rule to those bodies of men who make those determinations; yet it is evident in this case, the scriptures are so entirely reduced into the power of man, that in truth these bodies of men, or their determinations are render'd the only and compleat rule to others. A tenet that suits very well at Rome. But to show the absurdity and wickedness of this principle, that synods or the civil authority may determine the sense of scripture for private Christians as above supposed; let me add, That all, whether popes, councils, synods or civil states, that have made their religious establishments, have always pretended they took the sacred scriptures for their rule in making them, and that they are agreeable to the scripture. Upon this principle, all these must be received in their turns, and in the several civil states where they are made. For those synods (or in a word) the civil authority in those several ages, or states, have had all equal claim to this right of determining the sense of scripture, and so of making these religious establishments. How very different and contrary these have been, one to another; who, at all acquainted with history does not know? That is falsehood in England, which is truth at Rome and France. And that was truth in England yesterday, which is false there to day. And so a man (I don't say a Christian; for as that means a disciple of Christ, and it can't consistently mean any thing else, it is by this principle banished out of the world both name and thing) might yesterday walk to heaven in a path, which if walked in this day wou'd lead him down to hell. Alas what is the Christian bid to search the scriptures for, to repair to the law and testimony, as being the only light to direct us in these religious and important concerns; if it comes to this at last, that he must receive his information and direction herein, from some poor

fallible creatures. This principle, that a humane religious establishment is a rule binding to Christians, does eternally militate with those plain commands of the supream Lawgiver; is big with the absurdities I have just hinted at, and numberless more; has proved the grand engine of oppressing truth, Christianity, and murdering the best men the world has had in it; promoting and securing heresy, superstition and idolatry; and ought to be abhorred by all Christians.

\*\*\*\*

By what has been said you may see the falshood of another supposition or argument you bring to support the civil magistrate's authority in the case before us, viz. That every law not contrary to a superior law, is to be obeyed; which you seem to take for an allowed maxim, and so think you may fairly conclude, that any legal injunctions of the civil magistrate in matters of religion which are not contrary to some express law of God; are to be obeyed. If that proposition be limited to those things which are the objects of the civil magistrate's power, viz. the civil interests of the people; if it stands for a maxim it affects not the case before us at all. But if it be extended to things out or beyond the line of their power, as matters of religion are; it is then a falshood. In the latter extensive sense it seems you take it for a truth, or you would not argue from it as you do. The rule (then say you) to know whether a particular law is to be obeyed or not is to consider that law in relation to a superior law; and if it prohibits nothing which a superior law requires, or enjoins nothing which a superior law prohibits the doing of, then it is to be obeyed. This (I take it) is a principle invented for the support of tyranny, and industriously defended for the support of tyranny of the worst kind, i. e. spiritual: And if such as are so mean as to flatter civil rulers with notions of exorbitant power, and they only felt the effects thereof in fetters of slavery, the Christian church, and the world too, had been happier than now it is. Rulers have their infirmities as well as their subjects, and are too often carried away by the stream of temptation to play the tyrant: And still as heretofore, the world affords many in it that love to have it so, and too many assistants in forging the hateful chains of slavery and rivetting them on too if possible unseen, whilst they are industriously scattering false notions of power and obedience, such stupifying potions as this (you have now thrown in my way) that they may effectually lock up the senses of those whom they would enslave. But to return whence I have digressed. This pretended rule, as it holds not at all in matters of religion; so it does not hold true in all other cases, even in those that have no relation to the end of civil society, agreeable to what has been already observed, page [61]. If civil rulers should take it into their heads to make a law, that no man shall have Luther's Table-Talk in his house, that every man shall turn round upon his right heel at twelve of the clock every day (Sundays excepted), or any such like wise laws (thousands of which might be invented by a wise tyrant); By this rule these laws are to be strictly obeyed, a higher law to the contrary not being found. And yet I think it may be presumed, a free-born people can never become so servile as to regard them, while they have eyes to see that such rulers have gone out of the line of their power. There is no reason they should be fools because their rulers are so. Whenever the power that is put in any hands for the government of any people is applied to any other end than the preservation of their persons and properties, the securing and promoting their civil interests (the end for which power was put into their hands), I say when it is applied to any other end, then (according to the great Mr. Lock) it becomes tyranny. And since their power would be as truly applied to another end, in making such laws as I have above hinted at, as in making those that are notoriously unjust and oppressive (tho' the latter is worse); then it as truly becomes tyranny. How long people are to bear with such tyranny, or what they may do to free themselves from it (I should refer you to that author in his Treatise of Government), were it at all needful to come into consideration in the present case, as it is not; since the only thing I had here to do, was to show obedience was not due to such laws, as I think I have done by shewing they had no rightful authority to make them.

\*\*\*\*

But say you once more; "That the civil authority must have power to make such religious establishment which I have been impleading, in order to have unity of faith and uniformity of practice in religion. These you suppose necessary to peace and good order in the state; and that

this unity &c. is effected by such a religious establishment, of which we are speaking; and consequently we must suppose them vested with power to make such a one." Much weight I know has been laid upon this argument by the lovers of spiritual tyranny, and many ignorant unthinking people have been amused and deceived by it: But if we will look closely into it, it will appear lighter than vanity. . . .

[U]nity of faith and uniformity of practice in religion, never was nor can be effected in a Christian state by any such legal establishment of religion pleaded for in the above-mentioned argument. By a Christian state, I mean at least such a one, where the sacred scriptures lie open to the people: and therefore I don't intend, to consider this proposition relative to a popish state, where people's eyes being put out, they are more easily induced to follow their leaders; tho' it be also true that this unity of faith is not found among them that are bound in the strongest chains of human establishments. This has been tried in Protestant states, to make all think and practice alike in religion by legal establishments and annexed penalties: but it never produced this effect. It were easy if needful to multiply instances: but it is sufficient to our purpose to instance in our own nation; where this method has been tried ever since the reformation, and as constantly found ineffectual for the accomplishing this uniformity, for the sake of which these legal establishments have been pretended to be made. So far is this method from bringing about an unity of faith, that this is not found even with them that submit to a legal establishment. It is notoriously known, that the clergy of the Church of England are bound to subscribe to the thirty nine articles, i.e. to the truth of Calvinistick principles: But has this subscription answer'd its end? Is it not known, that they subscribe those articles in as widely distant and contradictory senses as were ever put on the most dubious passage in the Bible. And the truth is, if we consider the almost infinite variety with respect to the understandings, tempers and advantages of men for improvement in knowledge; it must be evident, that this uniformity of opinion and practice in religion (as it has not), so it never can be produced by the art and policy of man. A scheme for an artificial conformity in aspect, shape and stature of body, is not a whit more ridiculous, than an attempt to depress and contract the understandings of some, to stretch the capacities of others, to distort and torture all, 'till they are brought to one size, and one way of thinking and practice. So that if this unity of faith and uniformity of practice in religion is necessary to the peace of the state; then it follows, that the civil authority have a rightful power to put to death or banish all that cannot in conscience conform to their religious establishment. It will be to no purpose for the avoiding this consequence, to say; "the civil magistrate may not rise so high, or may affix some lower penalties for non-compliance with his establishment": For if this conformity to his establishment be necessary to the peace of the state, then the civil magistrate has a right to prevent a non-compliance with such establishment; and if lesser penalties will not do it (as experience has perpetually shown they will not), then they must rise so high as death, or banishment: For a right to prevent such non-compliance, that does not amount to a right to prevent it effectually, is no right to prevent it at all. So that on this hypothesis, all non-conformists to the religious establishment of any state, are to be rooted out by death, or banishment as fast as they appear: Which both experience and the nature of things evidence will be continual; the cutting off all that appear to day will no ways hinder others from appearing so to-morrow. Whence it is but a genuine consequence, that civil government is one of the greatest plagues that can be sent upon the world; since it must, in order to keep peace in it, be perpetually destroying men for no other crime but judging for themselves and acting according to their consciences in matters of religion (and so perhaps very often the best men in the state); and all this in vain too, as to the proposed end, viz. uniformity of practice in religion, that being for ever out of their reach.

[S]uch unity, or uniformity in religion is not necessary to the peace of a civil state. Since God has formed the understandings of men so different, with respect to clearness, strength, and compass, and placed them in such very different circumstances; a difference of sentiments in some things in religion, seems natural and unavoidable: and to suppose this does in its own nature tend to the public mischief of the state, seems little less than arraigning infinite wisdom.

From thence will arise greater reason and scope for mutual forbearance and Christian charity. But it will certainly be found on reflection, that it has no ill aspect on the civil state. Have we not known persons of different sentiments and practices in religious matters, as Presbyterians, Congregationalists, Church-Men (as commonly called) Baptists and Quakers, all living in the same community in quiet and peace with one another? I mention not papists; because tho' the principles of a consistent Protestant, naturally tend to make him a good subject in any civil state, even in a popish one, and therefore ought to be allowed in every state; yet that is not the case with the papist: for by his very principles he is an enemy or traytor to a Protestant state: and strictly speaking popery is so far from deserving the name of religion, that it is rather a conspiracy against it, against the reason, liberties, and peace of mankind; the visible head thereof the pope being in truth the vice-gerent of the Devil, Rev. 13. 2. To pretend that such as own the sacred scriptures to be the alone rule of faith and practice in religion, can't live in peace and love as good neighbours and good subjects, tho' their opinions and practices in religious matters be different, is both false in fact, and a vile reproach cast upon the gospel, which breaths nothing but benevolence and love among men: and while it plainly teaches the right of private judgment in every one, it most forcibly enjoins the duties of mutual forbearance and charity. That golden precept of our blessed Lord; Whatsoever ye would that Men should do unto you, do ye even so to them, Math. 7. 12, well taught and enforced by the teachers of the gospel, would (if I may use the word) infinitely more tend to make Christians of the several denominations in the state, good neighbours and good subjects, than this whimsical notion of uniformity. Which if it had always had its due force on the minds of men, we should never have heard of the necessity of uniformity in religion to the peace of the state, nor any such legal establishment of religion I have been impleading. That precept being a sacred guard to the unalienable rights of conscience, which are always invaded by such establishments.

But if you say, "that different sects in religion aiming at superiority, and endeavouring to suppress each other, form contrary factions in the state; which tends to distress and thwart the civil administration." I answer; The civil authority's protecting all in their just rights, and particularly this inestimable and unalienable one, the right of private judgment in matters of religion, is the best guard against the evil supposed in the objection. Besides, this is no more a natural consequence of men's thinking differently in religion, than of different judgments about wit, or poetry, trade, or husbandry.

Or if you farther suppose, "that religion is a matter of much greater importance than these things, and demands therefore a more warm and active zeal." Be it so; nothing farther follows from thence, than that we should endeavour to support its honour in a way suited to its excellency; to instruct one another in its grand principles and duties, and recommend it by calm and strong perswasion. It is by truth Christ's kingdom is set up, as he himself has taught us, Luke 18. 37. And it is a most unnatural excess of zeal, for the pretended defence of religion, to renounce humanity, and that equitable regard and kind affection, which are unalterably due from one man to another.

If it be again said, "that tho' these above-mentioned evils are directly contrary to the true genius and spirit of the Christian religion; yet they are the actual consequence of a variety of sects, exceeding fond of their particular schemes." I answer; they are only accidental abuses to which the best things are liable: The same argument may be urged against reason, and every branch of natural and civil liberty. It is equally conclusive as the papists have used it against the laity's having the Bible; viz. the consequence of people's having the Bible in their hands to read, has been the rising up of a variety of sects in the Christian world, and therefore they ought not to be permitted the use of it. As no such conclusion can be drawn against every body's having the Bible from such premises; so in the case before us, no conclusion against the right of private judgment for our selves in matters of religion, can be drawn from these inconveniencies; which do not spring directly from it, but arise entirely from different causes; from pride, or foolish bigotry, that either does not understand, or pays no regard to the unalienable rights of conscience.

[S]uch legal establishments have a direct contrary tendency to the peace of a Christian state. As the exercise of private reason, and free enquiry in a strict and constant adherence to the sacred scriptures as the only rule of faith and practice, is the most likely means to produce uniformity in the essential principles of Christianity as well as practice; so this is certainly the most sure method of procuring peace in the state. No man having any reason to repine at his neighbour's enjoyment of that right, which he is not willing to be without himself; and on the same grounds he challenges it for himself, he must be forced to own, that it is as reasonable his neighbour should enjoy it. But then on the other hand, every claim of power inconsistent with this right (as the making such a human establishment of religion of which we are speaking), is an encroachment on the Christian's liberty; and so far therefore he is in a state of slavery: And so far as a man feels himself in a state of slavery, so far he feels himself unhappy, and has reason to complain of that administration which puts the chain upon him. So that if slavery be for the peace of the civil state; then such establishments as we are speaking of, tend to promote the peace of the state: i.e. what makes the subjects miserable, really makes them happy. And as it necessarily tends to the misery of some, so it also promotes bigotry, pride, and ambition in such as are fond of such establishments: which have from time to time broken out in extravagancies and severities (upon good subjects) in men of authority and influence, and into rage and fury, hatred and obloquy, and such like wickednesses, in the impotent and commoner sort. . . . [T]his right of private judgment I have been pleading for . . . has promoted peace in the state, experience since has proved; as well as former experience made it most evident, that the incroachments upon this right of private judgment, by such legal establishments, have been exceeding prejudicial to the peace of the state: It being impossible but that such methods should cause and perpetuate schisms and divisions of the church, and disturb and disquiet the state; since the wrath of man cannot work the righteousness of God; and since civil punishments have no tendency to convince the conscience, but only to inflame the passions against the advisers and inflictors of them. And as history gives us so dreadful an account of the melancholy and tragical effects of this practice, one would think, that no people who have any regard for the peace of the flock of Christ, who know the worth of liberty, would be fond of such legal establishments, or any such methods as encroach upon Christian liberty, the most valuable of all our rights.

[T]he civil authority ought to protect all their subjects in the enjoyment of this right of private judgment in matters of religion, and the liberty of worshipping God according to their consciences. That being the end of civil government (as we have seen) viz. the greater security of enjoyment of what belongs to every one, and this right of private judgment, and worshipping God according to their consciences, being the natural and unalienable right of every man, what men by entering into civil society neither did, nor could give up into the hands of the community; it is but a just consequence, that they are to be protected in the enjoyment of this right as well as any other. A worshipping assembly of Christians have surely as much right to be protected from molestation in their worship, as the inhabitants of a town assembled to consult their civil interests from disturbance &c. This right I am speaking of, is the most valuable right, of which every one ought to be most tender, of universal and equal concernment to all; and security and protection in the enjoyment of it the just expectation of every individual. And the civil magistrate in endeavouring and doing this, most truly comes up to the character of a nursing father to the church of Christ. If this had been protected as it ought to have been, what infinite mischief to the Christian church had been prevented? From the want of a due care of this, the clergy through pride and ambition assumed the power of prescribing to, imposing on and domineering over the consciences of men; civil rulers for their own private ends helping it forward; which went on 'till it produced the most detestable monster the earth ever had upon it, the pope, who has deluged the earth with the blood of Christians. This being the true spirit of popery, to impose their determinations on all within their power by any methods which may appear most effectual: and those civil magistrates that suffered and helped that beast to invade this right, did therein commit fornication with her, and give her their strength and power; and so instead of proving fathers to their people, proved the cursed butchers of them. It has been by asserting and using this right,

that any of the nations who have been drunk with the Wine of her Fornication, have come out from her Abominations: and would the civil magistrates of those nations, who at this day worship the beast, but protect their subjects in this natural right of every one's judging for himself in matters of religion, according to that alone rule the Bible; that settled darkness of ignorance, error & idolatry, which now involves them, would vanish as the darkness of the night does by the rising of the sun. How unspeakable would the advantages be, arising from the protection of this right, did they reach no further than to the estates, bodies, and lives of men? All reformation is built on this single principle I have been pleading for, from which we should never depart: yet it must be owned and deserves to be lamented, that the reformed have too much departed from this principle upon which they at first set up; whence it has come to pass that reformation in one place and another have not been more perfect. For the Prince of Darkness has always found means this way to make a stand against the most vigorous efforts; and if any advantages have been gained in any point, to secure a safe retreat, by infatuating men with that strange sort of pride, whereby they assume to themselves only, but allow to none else, a power of domineering over the consciences of others. Religion will certainly lie under oppression if this unjust authority be transferred, to decrees of councils, convocations, injunctions of civil magistrates, or from one man or any order of men to another; as it is if we have any other rule of faith and practice in religion, besides the Bible. It were easy to enlarge on the vast advantages and happiness of admitting no other rule or guide but the sacred scriptures only: thence would flow the greatest blessings to mankind, peace and happiness to the world: so that if there be any rights and liberties of men that challenge protection and security therein from the civil magistrate, it is this natural right of private judgment in matters of religion, that the sacred scriptures only may become the rule to all men in all religious matters, as they ought to be. In a word, this is the surest way for the ease and quiet of rulers, as well as peace of the state, the surest way to engage the love and obedience of all the subjects. And if there be divers religious sects in the state, and the one attempts to offend the other, and the magistrate interposes only to keep the peace; it is but a natural consequence to suppose that in such case they all finding themselves equally safe, and protected in their rights by the civil power, they will all be equally obedient. It is the power given to one, to oppress the other, that has occasioned all the disturbances about religion. And should the clergy closely adhere to these principles, instead of their being reproached for pride and ambition, as the sowers of strife and contention and disturbance of the peace of the church of God; they would be honoured for their work's sake, esteemed for their character, loved as blessings to the world, heard with pleasure, and become successful in their endeavours to recommend the knowledge and practice of Christianity.

\*\*\*\*

[T]he civil peace is no ways broken by this action of preaching, of which we are speaking: But indeed if any should take occasion from it, to contend and quarrel with their neighbours, as papists and heathens have sometimes done, the Apostle (James 4. 1.) has shown us the true spring thereof, the lusts in men's hearts the outbursts of which in injuries to their neighbours, fall under the civil magistrate's cognizance. And the rights of conscience and private judgment in matters of religion are unalterably the same: And 'tis a scandal to Christians, to contend and quarrel with their neighbours for enjoying them, and inexcusable in a Protestant state to make any infringement upon them. And it was on these very principles, which here advance (and by which this law must fall) that our first reformers acted, and on which all reformation must be built. And tho' our nation in times past under the influence of a bigotted clergy, and arbitrary weak or popish princes, have made laws founded on principle contrary to these I have been pleading for; yet they seem in great measure rooted out of the nation: and these principle[s] of truth have taken root, and been growing ever since the happy Revolution, and Act of Toleration; and 'tis to be hoped will prevail & spread more and more, until all spiritual tyranny and lording it over the consciences of men, be banished out of the world.

But I shall finish with observing, That by virtue of the Act of Toleration, all his majesty's subjects are so freed from the force of all coercive laws in matters of religion, relating to worship



and discipline, that they act their own private judgment, without restraint: That any number of Christians greater or less, hear any Protestant minister they desire, without controul from the will of others, or authority of the civil state. . . . This right of private judgment and liberty now mentioned, is confessed and secured to you by that law which was the glory of the reign of William and Mary; but by your law now before me, it is denied to you. . . . Nor is this about a trivial matter, or what is dependent upon the will of your legislature. The rights of Magna Charta depend not on the will of the prince, or the will of the legislature; but they are the inherent natural rights of Englishmen: secured and confirmed they may be by the legislature, but not derived from nor dependent on their will. And if there be any rights, any priviledges, that we may call natural and unalienable, this is one, viz. the right of private judgment, and liberty of worshipping God according to our consciences, without controul from human laws. A priviledge more valuable than the civil rights of Magna Charta. This we hold, not from man, but from God: which therefore no man can touch and be innocent. . . .

ISSAC BACKUS  
AN APPEAL TO THE PUBLIC FOR RELIGIOUS LIBERTY  
Boston 1773 [Excerpts] 2

[I]n civil states the power of the whole collective body is vested in a few hands, that they may with better advantage defend themselves against injuries from abroad, and correct abuses at home, for which end a few have a right to judge for the whole society; but in religion each one has an equal right to judge for himself; for we must all appear before the judgment seat of Christ, that every one may receive the things done in his body, according to that he hath done (not what any earthly representative hath done for him) 2 Cor. 5. 10. And we freely confess that we can find no more warrant from divine truth, for any people on earth to constitute any men their representatives, to make laws to impose religious taxes, than they have to appoint Peter or the Virgin Mary to represent them before the throne above. We are therefore brought to a stop about paying so much regard to such laws, as to give in annual certificates to the other denomination, as we have formerly done.

\*\*\*

[T]he scheme we oppose evidently tends to destroy the purity and life of religion; for the inspired apostle assures us, that the church is espoused as a chaste virgin to Christ, and is obliged to be subject to him in every thing, as a true wife is to her husband. Now the most chaste domestic obedience, does not at all interfere with any lawful subjection to civil authority; but for a woman to admit the highest ruler in a nation into her husband's place, would be adultery or whoredom; and how often are mens inventions about worship so called in the sacred oracles? And does it not greatly concern us all, earnestly to search out and put away such evils, as we would desire to escape the awful judgments that such wickedness has brought on other nations! Especially if we consider that not only the purity, but also the very life and being of religion among us is concerned therein; for 'tis evident that Christ has given as plain laws to determine what the duty of people is to his ministers, as he has the duty of ministers to his people; and most certainly he is as able to enforce the one as the other. . . .

\*\*\*\*

[T]he custom which they want us to countenance, is very hurtful to civil society: for by the law of Christ every man, is not only allowed, but also required, to judge for himself, concerning the circumstantial as well as the essentials, of religion, and to act according to the full persuasion of his own mind; and he contracts guilt to his soul if he does the contrary. Rom. 14. 5,

---

<sup>2</sup> Republished in Ellis Sandoz, ed., 1 Political Sermons of the Founding Era, 1730-1805, at 327-68 (Liberty Fund 1998). [<http://oll.libertyfund.org/ToC/0018.php>]

23. What a temptation then does it lay for men to contract such guilt, when temporal advantages are annexed to one persuasion, and disadvantages laid upon another? i.e. in plain terms, how does it tend to hypocrisy and lying? than which, what can be worse to human society! Not only so, but coercive measures about religion also tend to provoke to emulation, wrath and contention, and who can describe all the mischiefs of this nature, that such measures have produced in our land! But where each person, and each society, are equally protected from being injured by others, all enjoying equal liberty, to attend and support the worship which they believe is right, having no more striving for mastery or superiority than little children (which we must all come to, or not enter into the kingdom of heaven) how happy are it's effects in civil society? In the town of Boston they enjoy something of these blessings, and why may not the country have the same liberty? . . .

\*\*\*\*

The great importance of a general union through this country, in order to the preservation of our liberties, has often been pleaded for with propriety; but how can such a union be expected so long as that dearest of all rights, equal liberty of conscience is not allowed? Yea, how can any reasonably expect that he who has the hearts of kings in his hand, will turn the heart of our earthly sovereign to hear the pleas for liberty, of those who will not hear the cries of their fellow-subjects, under their oppressions? Has it not been plainly proved, that so far as any man gratifies his own inclinations, without regard to the universal law of equity, so far he is in bondage? so that it is impossible for any one to tyrannize over others, without thereby becoming a miserable slave himself: a slave to raging lusts, and a slave to guilty fears of what will be the consequence. . . .

\*\*\*\*

Suffer us a little to expostulate with our fathers and brethren, who inhabit the land to which our ancestors fled for religious liberty. You have lately been accused with being disorderly and rebellious, by men in power, who profess a great regard for order and the public good; and why don't you believe them, and rest easy under their administrations? You tell us you cannot, because you are taxed where you are not represented; and is it not really so with us? You do not deny the right of the British parliament to impose taxes within her own realm; only complain that she extends her taxing power beyond her proper limits; and have we not as good right to say you do the same thing? and so that wherein you judge others you condemn your selves? Can three thousand miles possibly fix such limits to taxing power, as the difference between civil and sacred matters has already done? One is only a distance of space, the other is so great a difference in the nature of things, as there is between sacrifices to God, and the ordinances of men. This we trust has been fully proved.

If we ask why have you not been easy and thankful since the parliament has taken off so many of the taxes that they had laid upon us? you answer that they still claim a power to tax us, when, and as much as they please; and is not that the very difficulty before us? . . .

\*\*\*\*

Many think it hard to be frowned upon only for pleading for their rights, and laying open particular acts of encroachment thereon; but what frowns have we met with for no other crime? and as the present contest between Great-Britain and America, is not so much about the greatness of the taxes already laid, as about a submission to their taxing power; so (though what we have already suffered is far from being a trifle, yet) our greatest difficulty at present concerns the submitting to a taxing power in ecclesiastical affairs. It is supposed by many that we are exempted from such taxes, but they are greatly mistaken, for all know that paper is a money article; and writing upon it is labour, and this tax we must pay every year, as a token of submission to their power, or else they will lay a heavier tax upon us. And we have one difficulty in submitting to this power, which our countrymen have not in the other case: that is, our case affects the conscience, as their's does not: and equal liberty of conscience is one essential article in our charter, which constitutes this government, and describes the extent of our rulers authority, and what are the rights and liberties of the people. . . .

\*\*\*\*

[H]ave not our legislature from time to time, made acts to empower the major part of the inhabitants in towns and precincts, to give away their neighbours estates to what ministers they please! And can we submit to such doctrines and commandments of men, and not betray true liberty of conscience! Every person is or ought to be, benefited by civil government, and therefore they owe rulers honor and a tribute on that account; but the like cannot be truly said of an imposed minister; for as the gospel ministry is an ordinance of God and not of man, so the obligation that any person or people are under to obey and support any man as a minister of Christ, arises from the consideration of his appearing to them to resemble his Master in doctrine and conversation, and from the benefit which people receive under their ministrations. From whence the law of equity makes the free communications of our carnal things to Christ's ministers, to be a matter that as really concerns the exercise of a good conscience toward God, as prayer and praise do; for they are both called sacrifices to him in the same chapter. Heb. 13. 15, 16.

THOMAS JEFFERSON  
A BILL FOR ESTABLISHING RELIGIOUS FREEDOM  
(1779)

Section I. Well aware that the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds; that Almighty God hath created the mind free, and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint; that all attempts to influence it by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion, who being lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do, but to exalt it by its influence on reason alone; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world and through all time: That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness; and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow citizens, he has a natural right; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing, with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it; that though indeed these are criminals who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that the opinions of men are not the object of civil government, nor under its jurisdiction; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of

judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them.

Section II. We the General Assembly of Virginia do enact that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

Section III. And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this act irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right.

JAMES MADISON  
MEMORIAL AND REMONSTRANCE  
AGAINST RELIGIOUS ASSESSMENTS

June 20, 1785

*To the Honorable the General Assembly of the Commonwealth of Virginia*

A MEMORIAL AND REMONSTRANCE

We the subscribers, citizens of the said Commonwealth, having taken into serious consideration, a Bill printed by order of the last Session of General Assembly, entitled "A Bill establishing a provision for Teachers of the Christian Religion," and conceiving that the same if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said Bill,

1. Because we hold it for a fundamental and undeniable truth, "that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated by their own minds cannot follow the dictates of other men: It is unalienable also, because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governour of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the General Authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of Religion, no mans right is abridged by the institution of Civil Society and that Religion is wholly exempt from its cognizance. True it

is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined, but the will of the majority; but it is also true that the majority may trespass on the rights of the minority.

2. Because if Religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and vicegerents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the co-ordinate departments, more necessarily is it limited with regard to the constituents. The preservation of a free Government requires not merely, that the metes and bounds which separate each department of power be invariably maintained; but more especially that neither of them be suffered to overleap the great Barrier which defends the rights of the people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves nor by an authority derived from them, and are slaves.

3. Because it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of Citizens, and one of the noblest characteristics of the late Revolution. The free men of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? that the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

4. Because the Bill violates that equality which ought to be the basis of every law, and which is more indispensable, in proportion as the validity or expediency of any law is more liable to be impeached. If "all men are by nature equally free and independent," all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an "equal title to the free exercise of Religion according to the dictates of Conscience." Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man: To God, therefore, not to man, must an account of it be rendered. As the Bill violates equality by subjecting some to peculiar burdens, so it violates the same principle, by granting to others peculiar exemptions. Are the Quakers and Menonists the only sects who think a compulsive support of their Religions unnecessary and unwarrantable? Can their piety alone be entrusted with the care of public worship? Ought their Religions to be endowed above all others with extraordinary privileges by which proselytes may be enticed from all others? We think too favorably of the justice and good sense of these denominations to believe that they either covet pre-eminences over their fellow citizens or that they will be seduced by them from the common opposition to the measure.

5. Because the Bill implies either that the Civil Magistrate is a competent Judge of Religious Truth; or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world: the second an unhallowed perversion of the means of salvation.

6. Because the establishment proposed by the Bill is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the Christian Religion itself, for every page of it disavows a dependence on the powers of this world: it is a contradiction to fact; for it is known that this Religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them, and not only during the period of miraculous aid, but long after it had been left to its own evidence and the ordinary care of Providence. Nay, it is a contradiction in terms; for a Religion not invented by human policy, must have pre-existed

and been supported, before it was established by human policy. It is moreover to weaken in those who profess this Religion a pious confidence in its innate excellence and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies to trust it to its own merits.

7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy, ignorance and servility in the laity, in both, superstition, bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect, point to the ages prior to its incorporation with Civil policy. Propose a restoration of this primitive State in which its Teachers depended on the voluntary rewards of their flocks, many of them predict its downfall. On which Side ought their testimony to have greatest weight, when for or when against their interest?

8. Because the establishment in question is not necessary for the support of Civil Government. If it be urged as necessary for the support of Civil Government only as it is a means of supporting Religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If Religion be not within the cognizance of Civil Government how can its legal establishment be necessary to Civil Government? What influence in fact have ecclesiastical establishments had on Civil Society? In some instances they have been seen to erect a spiritual tyranny on the ruins of the Civil authority; in many instances they have been seen upholding the thrones of political tyranny: in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty, may have found an established Clergy convenient auxiliaries. A just Government instituted to secure & perpetuate it needs them not. Such a Government will be best supported by protecting every Citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any Sect, nor suffering any Sect to invade those of another.

9. Because the proposed establishment is a departure from that generous policy, which, offering an Asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens. What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an Asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be in its present form from the Inquisition, it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions, must view the Bill as a Beacon on our Coast, warning him to seek some other haven, where liberty and philanthropy in their due extent, may offer a more certain repose from his Troubles.

10. Because it will have a like tendency to banish our Citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration by revoking the liberty which they now enjoy, would be the same species of folly which has dishonoured and depopulated flourishing kingdoms.

11. Because it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion has produced among its several sects. Torrents of blood have been spilt in the old world, by vain attempts of the secular arm, to extinguish Religious discord, by proscribing all difference in Religious opinion. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American Theatre has exhibited proofs that equal and compleat liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the State. If with the salutary effects of this system under our own eyes, we begin to contract the bounds of Religious freedom, we know no name that will too severely reproach our folly. At least let warning be taken at the first fruits of the threatened innovation. The very appearance of the Bill has transformed "that Christian forbearance, love and charity," which of late mutually prevailed, into animosities and jealousies, which may not soon be appeased. What

mischiefs may not be dreaded, should this enemy to the public quiet be armed with the force of a law?

12. Because the policy of the Bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false Religions; and how small is the former! Does the policy of the Bill tend to lessen the disproportion? No; it at once discourages those who are strangers to the light of revelation from coming into the Region of it; and countenances by example the nations who continue in darkness, in shutting out those who might convey it to them. Instead of Levelling as far as possible, every obstacle to the victorious progress of Truth, the Bill with an ignoble and unchristian timidity would circumscribe it with a wall of defence against the encroachments of error.

13. Because attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of Citizens, tend to enervate the laws in general, and to slacken the bands of Society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case, where it is deemed invalid and dangerous? And what may be the effect of so striking an example of impotency in the Government, on its general authority?

14. Because a measure of such singular magnitude and delicacy ought not to be imposed, without the clearest evidence that it is called for by a majority of citizens, and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. "The people of the respective counties are indeed requested to signify their opinion respecting the adoption of the Bill to the next Session of Assembly." But the representation must be made equal, before the voice either of the Representatives or of the Counties will be that of the people. Our hope is that neither of the former will, after due consideration, espouse the dangerous principle of the Bill. Should the event disappoint us, it will still leave us in full confidence, that a fair appeal to the latter will reverse the sentence against our liberties.

15. Because finally, "the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience" is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the "Declaration of those rights which pertain to the good people of Virginia, as the basis and foundation of Government," it is enumerated with equal solemnity, or rather studied emphasis. Either then, we must say, that the Will of the Legislature is the only measure of their authority; and that in the plenitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred: Either we must say, that they may controul the freedom of the press, may abolish the Trial by Jury, may swallow up the Executive and Judiciary Powers of the State; nay that they may despoil us of our very right of suffrage, and erect themselves into an independent and hereditary Assembly or, we must say, that they have no authority to enact into law the Bill under consideration. We the Subscribers say, that the General Assembly of this Commonwealth have no such authority: And that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it, this remonstrance; earnestly praying, as we are in duty bound, that the Supreme Lawgiver of the Universe, by illuminating those to whom it is addressed, may on the one hand, turn their Councils from every act which would affront his holy prerogative, or violate the trust committed to them: and on the other, guide them into every measure which may be worthy of his blessing, may redound to their own praise, and may establish more firmly the liberties, the prosperity and the happiness of the Commonwealth.

THE U.S. HOUSE OF REPRESENTATIVES  
DEBATES ON AMENDMENTS TO THE CONSTITUTION  
1789 [Excerpts] 3

[15 Aug.]

The House again went into a Committee of the Whole on the proposed amendments to the constitution, Mr. Boudinot in the Chair.

The fourth proposition being under consideration, as follows:

Article 1. Section 9. Between paragraphs two and three insert "no religion shall be established by law, nor shall the equal rights of conscience be infringed."

Mr. Sylvester had some doubts of the propriety of the mode of expression used in this paragraph. He apprehended that it was liable to a construction different from what had been made by the committee. He feared it might be thought to have a tendency to abolish religion altogether.

Mr. Vining suggested the propriety of transposing the two members of the sentence.

Mr. Gerry said it would read better if it was, that no religious doctrine shall be established by law.

Mr. Sherman thought the amendment altogether unnecessary, inasmuch as Congress had no authority whatever delegated to them by the Constitution to make religious establishments; he would, therefore, move to have it struck out.

Mr. [Daniel] Carroll. — As the rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand; and as many sects have concurred in opinion that they are not well secured under the present constitution, he said he was much in favor of adopting the words. He thought it would tend more towards conciliating the minds of the people to the Government than almost any other amendment he had heard proposed. He would not contend with gentlemen about the phraseology, his object was to secure the substance in such a manner as to satisfy the wishes of the honest part of the community. Mr. Madison said, he apprehended the meaning of the words to be, that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience. Whether the words are necessary or not, he did not mean to say, but they had been required by some of the State Conventions, who seemed to entertain an opinion that under the clause of the Constitution, which gave power to Congress to make all laws necessary and proper to carry into execution the Constitution, and the laws made under it, enabled them to make laws of such a nature as might infringe the rights of conscience and establish a national religion; to prevent these effects he presumed the amendment was intended, and he thought it as well expressed as the nature of the language would admit. Mr. Huntington said that he feared, with the gentleman first up on this subject, that the words might be taken in such latitude as to be extremely hurtful to the cause of religion. He understood the amendment to mean what had been expressed by the gentleman from Virginia; but others might find it convenient to put another construction upon it. The ministers of their congregations to the Eastward were maintained by the contributions of those who belonged to their society; the expense of building meetinghouses was contributed in the same manner. These things were regulated by by-laws. If an action was brought before a Federal Court on any of these cases, the person who had neglected to perform his engagements could not be compelled to do it; for a support of ministers, or building of places of worship might be construed into a religious establishment.

---

<sup>3</sup> 1 *Annals of Congress* 729-31, 755, 766, *The Debates and Proceedings in the Congress of the United States*, "History of Congress." 42 vols. Washington, D.C.: Gales & Seaton, 1834--56 [Reprinted from 5 Founders' Constitution, Amendment I (Religion), Document 53].  
[[http://press-pubs.uchicago.edu/founders/documents/amendI\\_religions53.html](http://press-pubs.uchicago.edu/founders/documents/amendI_religions53.html)]



By the charter of Rhode Island, no religion could be established by law; he could give a history of the effects of such a regulation; indeed the people were now enjoying the blessed fruits of it. He hoped, therefore, the amendment would be made in such a way as to secure the rights of conscience, and a free exercise of the rights of religion, but not to patronize those who professed no religion at all.

Mr. Madison thought, if the word national was inserted before religion, it would satisfy the minds of honorable gentlemen. He believed that the people feared one sect might obtain a pre-eminence, or two combine together, and establish a religion to which they would compel others to conform. He thought if the word national was introduced, it would point the amendment directly to the object it was intended to prevent.

Mr. Livermore was not satisfied with that amendment; but he did not wish them to dwell long on the subject. He thought it would be better if it was altered, and made to read in this manner, that Congress shall make no laws touching religion, or infringing the rights of conscience.

Mr. Gerry did not like the term national, proposed by the gentleman from Virginia, and he hoped it would not be adopted by the House. It brought to his mind some observations that had taken place in the conventions at the time they were considering the present Constitution. It had been insisted upon by those who were called antifederalists, that this form of Government consolidated the Union; the honorable gentleman's motion shows that he considers it in the same light. Those who were called antifederalists at that time complained that they had injustice done them by the title, because they were in favor of a Federal Government, and the others were in favor of a national one; the federalists were for ratifying the constitution as it stood, and the others not until amendments were made. Their names then ought not to have been distinguished by federalists and antifederalists, but rats and antirats.

Mr. Madison withdrew his motion, but observed that the words "no national religion shall be established by law," did not imply that the Government was a national one; the question was then taken on Livermore's motion, and passed in the affirmative, thirty-one for, and twenty against it.

[17 Aug.]

The committee then proceeded to the fifth proposition:

Article 1, section 10, between the first and second paragraph, insert "no State shall infringe the equal rights of conscience, nor the freedom of speech or of the press, nor of the right of trial by jury in criminal cases."

Mr. Tucker. — This is offered, I presume, as an amendment to the Constitution of the United States, but it goes only to the alteration of the constitutions of particular States. It will be much better, I apprehend, to leave the State Governments to themselves, and not to interfere with them more than we already do; and that is thought by many to be rather too much. I therefore move, sir, to strike out these words.

Mr. Madison conceived this to be the most valuable amendment in the whole list. If there was any reason to restrain the Government of the United States from infringing upon these essential rights, it was equally necessary that they should be secured against the State Governments. He thought that if they provided against the one, it was as necessary to provide against the other, and was satisfied that it would be equally grateful to the people. Mr. Livermore had no great objection to the sentiment, but he thought it not well expressed. He wished to make it an affirmative proposition; "the equal rights of conscience, the freedom of speech or of the press, and the right of trial by jury in criminal cases, shall not be infringed by any State."

This transposition being agreed to, and Mr. Tucker's motion being rejected, the clause was adopted.

[20 Aug.]

On motion of Mr. Ames, the fourth amendment was altered so as to read "Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience." This being adopted. . . .

JOHN LELAND  
THE RIGHTS OF CONSCIENCE INALIENABLE  
(New London 1791) [Excerpts]<sup>4</sup>

1. [T]he law was not made for a righteous man, but for the disobedient. 2. [R]ighteous men have to part with a little of their liberty and property to preserve the rest. 3. [A]ll power is vested in and consequently derived from the people. 4. [T]he law should rule over rulers, and not rulers over the law. 5. [G]overnment is founded on compact. 6. [E]very law made by the legislators inconsistent with the compact, modernly called a constitution, is usurpive in the legislators and not binding on the people. 7. [W]hen government is found inadequate to preserve the liberty and property of the people they have an indubitable right to alter it so as to answer those purposes. 8. [L]egislators in their legislative capacity cannot alter the constitution, for they are hired servants of the people to act within the limits of the constitution.

\*\*\*\* The question is, "Are the rights of conscience alienable, or inalienable?"

The word conscience signifies common science, a court of judicature which the Almighty has erected in every human breast; a censor morum over all his actions. Conscience will ever judge right when it is rightly informed, and speak the truth when it understands it. But to advert to the question—"Does a man upon entering into social compact surrender his conscience to that society to be controlled by the laws thereof, or can he in justice assist in making laws to bind his children's consciences before they are born?" I judge not, for the following reasons:

1. Every man must give an account of himself to God, and therefore every man ought to be at liberty to serve God in that way that he can best reconcile it to his conscience. If government can answer for individuals at the day of judgment, let men be controlled by it in religious matters; otherwise let men be free.

2. It would be sinful for a man to surrender that to man which is to be kept sacred for God. A man's mind should be always open to conviction, and an honest man will receive that doctrine which appears the best demonstrated; and what is more common than for the best of men to change their minds? Such are the prejudices of the mind, and such the force of tradition, that a man who never alters his mind is either very weak or very stubborn. How painful then must it be to an honest heart to be bound to observe the principles of his former belief after he is convinced of their imbecility? and this ever has and ever will be the case while the rights of conscience are considered alienable.

3. But supposing it was right for a man to bind his own conscience, yet surely it is very iniquitous to bind the consciences of his children; to make fetters for them before they are born is very cruel. And yet such has been the conduct of men in almost all ages that their children have been bound to believe and worship as their fathers did, or suffer shame, loss, and sometimes life; and at best to be called dissenters, because they dissent from that which they never joined voluntarily. Such conduct in parents is worse than that of the father of Hannibal, who imposed an oath upon his son while a child never to be at peace with the Romans.

---

<sup>4</sup> Excerpts from Leland's essay, originally titled "The Rights of Conscience inalienable; and therefore Religious Opinions not cognizable by Law: Or, The high-flying Churchman, stript of his legal Robe, appears a Yaho[o]," as republished in Ellis Sandoz, ed., *2 Political Sermons of the Founding Era, 1730-1805*, at 1079-99 (Liberty Fund 1998). [<http://oll.libertyfund.org/ToC/0018.php>]

4. Finally, religion is a matter between God and individuals, religious opinions of men not being the objects of civil government nor any ways under its control. It has often been observed by the friends of religious establishment by human laws, that no state can long continue without it; that religion will perish, and nothing but infidelity and atheism prevail.

Are these things facts? Did not the christian religion prevail during the three first centuries, in a more glorious manner than ever it has since, not only without the aid of law, but in opposition to all the laws of haughty monarchs? And did not religion receive a deadly wound by being fostered in the arms of civil power and regulated by law? These things are so. From that day to this we have but a few instances of religious liberty to judge by; for in almost all states civil rulers (by the instigation of covetous priests) have undertaken to steady the ark of religion by human laws; but yet we have a few of them without leaving our own land. The state of Rhode-Island has stood above 160 years without any religious establishment. The state of New-York never had any. New-Jersey claims the same. Pennsylvania has also stood from its first settlement until now upon a liberal foundation; and if agriculture, the mechanical arts and commerce, have not flourished in these states equal to any of the states I judge wrong. It may further be observed, that all the states now in union, saving two or three in New-England, have no legal force used about religion, in directing its course or supporting its preachers. And moreover the federal government is forbidden by the constitution to make any laws establishing any kind of religion. If religion cannot stand, therefore, without the aid of law, it is likely to fall soon in our nation, except in Connecticut and Massachusetts.

To say that "religion cannot stand without a state establishment" is not only contrary to fact (as has been proved already) but is a contradiction in phrase. Religion must have stood a time before any law could have been made about it; and if it did stand almost three hundred years without law it can still stand without it.

The evils of such an establishment are many.

1. Uninspired fallible men make their own opinions tests of orthodoxy, and use their own systems, as Procrustes used his iron bedstead, to stretch and measure the consciences of all others by. Where no toleration is granted to non-conformists either ignorance and superstition prevail or persecution rages; and if toleration is granted to restricted non-conformists the minds of men are biassed to embrace that religion which is favored and pampered by law (and thereby hypocrisy is nourished) while those who cannot stretch their consciences to believe any thing and every thing in the established creed are treated with contempt and opprobrious names; and by such means some are pampered to death by largesses and others confined from doing what good they otherwise could by penury. The first lie under a temptation to flatter the ruling party, to continue that form of government which brings the sure bread of idleness; the last to despise that government and those rulers that oppress them. The first have their eyes shut to all further light that would alter the religious machine; the last are always seeking new light, and often fall into enthusiasm. Such are the natural evils of establishment in religion by human laws.

2. Such establishments not only wean and alienate the affections of one from another on account of the different usages they receive in their religious sentiments, but are also very impolitic, especially in new countries; for what encouragement can strangers have to migrate with their arts and wealth into a state where they cannot enjoy their religious sentiments without exposing themselves to the law? when at the same time their religious opinions do not lead them to be mutinous. And further, how often have kingdoms and states been greatly weakened by religious tests! In the time of the persecution in France not less than twenty thousand people fled for the enjoyment of religious liberty.

3. These establishments metamorphose the church into a creature, and religion into a principle of state; which has a natural tendency to make men conclude that bible religion is nothing but a trick of state. Hence it is that the greatest part of the well informed in literature are overrun with deism and infidelity: nor is it likely it will ever be any better while preaching is

made a trade of emolument. And if there is no difference between bible religion and state religion I shall soon fall into infidelity.

4. There are no two kingdoms or states that establish the same creed or formularies of faith (which alone proves their debility). In one kingdom a man is condemned for not believing a doctrine that he would be condemned for believing in another kingdom. Both of these establishments cannot be right — but both of them can be, and surely are, wrong.

5. The nature of such establishments, further, is to keep from civil office the best of men. Good men cannot believe what they cannot believe; and they will not subscribe to what they disbelieve, and take an oath to maintain what they conclude is error: and as the best of men differ in judgment there may be some of them in any state: their talents and virtue entitle them to fill the most important posts, yet because they differ from the established creed of the state they cannot — will not fill those posts. Whereas villains make no scruple to take any oath.

If these and many more evils attend such establishments — what were and still are the causes that ever there should be a state establishment of religion?

The causes are many — some of them follow.

1. The love of importance is a general evil. It is natural to men to dictate for others; they choose to command the bushel and use the whip-row, to have the halter around the necks of others to hang them at pleasure.

2. An over-fondness for a particular system or sect. This gave rise to the first human establishment of religion, by Constantine the Great. Being converted to the christian system, he established it in the Roman empire, compelled the pagans to submit, and banished the christian heretics, built fine chapels at public expence, and forced large stipends for the preachers. All this was done out of love to the christian religion: but his love operated inadvertently; for he did the christian church more harm than all the persecuting emperors did. It is said that in his day a voice was heard from heaven, saying, "Now is the poison spued into the churches." If this voice was not heard, it nevertheless was a truth; for from that day to this the christian religion has been made a stirrup to mount the steed of popularity, wealth, and ambition.

3. To produce uniformity in religion. Rulers often fear that if they leave every man to think, speak and worship as he pleases, that the whole cause will be wrecked in diversity; to prevent which they establish some standard of orthodoxy to effect uniformity. But is uniformity attainable? Millions of men, women and children, have been tortured to death to produce uniformity, and yet the world has not advanced one inch towards it. And as long as men live in different parts of the world, have different habits, education and interests, they will be different in judgment, humanly speaking.

Is conformity of sentiments in matters of religion essential to the happiness of civil government? Not at all. Government has no more to do with the religious opinions of men than it has with the principles of the mathematics. Let every man speak freely without fear — maintain the principles that he believes — worship according to his own faith, either one God, three Gods, no God, or twenty Gods; and let government protect him in so doing, i.e. see that he meets with no personal abuse or loss of property for his religious opinions. Instead of discouraging of him with proscriptions, fines, confiscation or death; let him be encouraged, as a free man, to bring forth his arguments and maintain his points with all boldness; then if his doctrine is false it will be confuted, and if it is true (though ever so novel) let others credit it. When every man has this liberty what can he wish for more? A liberal man asks for nothing more of government. The duty of magistrates is not to judge of the divinity or tendency of doctrines, but when those principles break out into overt acts of violence then to use the civil sword and punish the vagrant for what he has done and not for the religious phrenzy that he acted from.

It is not supposable that any established creed contains the whole truth and nothing but truth; but supposing it did, which established church has got it? All bigots contend for it — each society cries out "The temple of the Lord are we." Let one society be supposed to be in possession of the whole — let that society be established by law — the creed of faith that they adopt be so consecrated by government that the man that disbelieves it must die — let this creed finally

prevail over the whole world. I ask what honor truth gets by all this? None at all. It is famed of a Prussian, called John the Cicero, that by one oration he reconciled two contending princes actually in war; but, says the historian, "it was his six thousand horse of battle that had the most persuasive oratory." So when one creed or church prevails over another, being armed with (a coat of mail) law and sword, truth gets no honor by the victory. Whereas if all stand upon one footing, being equally protected by law as citizens (not as saints) and one prevails over another by cool investigation and fair argument, then truth gains honor, and men more firmly believe it than if it was made an essential article of salvation by law.

Truth disdains the aid of law for its defence—it will stand upon its own merits. The heathens worshipped a goddess called truth, stark naked; and all human decorations of truth serve only to destroy her virgin beauty. It is error, and error alone, that needs human support; and whenever men fly to the law or sword to protect their system of religion and force it upon others, it is evident that they have something in their system that will not bear the light and stand upon the basis of truth.

4. The common objection "that the ignorant part of the community are not capacitated to judge for themselves" supports the popish hierarchy, and all protestant as well as Turkish and pagan establishments, in idea.

But is this idea just? Has God chosen many of the wise and learned? Has he not hidden the mystery of gospel truth from them and revealed it unto babes? Does the world by wisdom know God? Did many of the rulers believe in Christ when he was upon earth? Were not the learned clergy (the scribes) his most inveterate enemies? Do not great men differ as much as little men in judgment? Have not almost all lawless errors crept into the world through the means of wise men (so called)? Is not a simple man, who makes nature and reason his study, a competent judge of things? Is the bible written (like Caligula's laws) so intricate and high that none but the letter-learned (according to common phrase) can read it? Is not the vision written so plain that he that runs may read it? Do not those who understand the original languages which the bible was written in differ as much in judgment as others? Are the identical copies of Matthew, Mark, Luke and John, together with the epistles, in every university, and in the hands of every master of arts? If not, have not the learned to trust to a human transcription, as much as the unlearned have to a translation? If these questions and others of a like nature can be confuted, then I will confess that it is wisdom for a conclave of bishops or a convocation of clergy to frame a system out of the bible and persuade the legislature to legalise it. No. It would be attended with so much expence, pride, domination, cruelty and bloodshed, that let me rather fall into infidelity; for no religion at all is better than that which is worse than none.

5. The ground work of these establishments of religion is clerical influence. Rulers, being persuaded by the clergy that an establishment of religion by human laws would promote the knowledge of the gospel, quell religious disputes, prevent heresy, produce uniformity, and finally be advantageous to the state, establish such creeds as are framed by the clergy; and this they often do the more readily when they are flattered by the clergy that if they thus defend the truth they will become nursing fathers to the church and merit something considerable for themselves.

What stimulates the clergy to recommend this mode of reasoning is,

1. Ignorance—not being able to confute error by fair argument.
2. Indolence—not being willing to spend any time to confute the heretical.
3. But chiefly covetousness, to get money—for it may be observed that in all these establishments settled salaries for the clergy recoverable by law are sure to be interwoven; and was not this the case, I am well convinced that there would not be many if any religious establishments in the christian world.

\*\*\*

Mahomet called in the use of law and sword to convert people to his religion; but Jesus did not, does not.

It is the duty of men to love God with all their hearts, and their neighbors as themselves; but have legislatures authority to punish men if they do not? So there are many things that Jesus and the apostles taught that men ought to obey which yet the civil law has no concerns in.

\*\*\*\*

Let all those whose consciences dictate that they ought to be taxed by law to maintain their preachers bring in their names to the society-clerk by a certain day, and then assess them all, according to their estates, to raise the sum stipulated in the contract; and all others go free. Both parties by this method would enjoy the full liberty of conscience without oppressing one another, the law use no force in matters of conscience, the evil of Rhode-Island law be escaped, and no persons could find fault with it (in a political point of view) but those who fear the consciences of too many would lie dormant, and therefore wish to force them to pay. Here let it be noted, that there are many in the world who believe in conscience that a minister is not entitled to any acknowledgment for his services without he is so poor that he cannot live without it (and thereby convert a gospel debt to alms). Though this opinion is not founded either on reason or scripture, yet it is a better opinion than that which would force them to pay a preacher by human law.

\*\*\*\*

Suppose that man (whose name need not be mentioned) that fills every American heart with pleasure and awe, should remove to Connecticut for his health, or any other cause—what a scandal would it be to the state to tax him to a presbyterian minister unless he produced a certificate informing them that he was an episcopalian?

The federal constitution certainly had the advantage, of any of the state constitutions, in being made by the wisest men in the whole nation, and after an experiment of a number of years trial, upon republican principles; and that constitution forbids Congress ever to establish any kind of religion, or require any religious test to qualify any officer in any department of the federal government. Let a man be pagan, Turk, Jew or Christian, he is eligible to any post in that government. So that if the principles of religious liberty, contended for in the foregoing pages, are supposed to be fraught with deism, fourteen states in the Union are now fraught with the same. But the separate states have not surrendered that (supposed) right of establishing religion to Congress. Each state retains all its power, saving what is given to the general government by the federal constitution.

\*\*\*\*

Divines generally inform us that there is such a time to come (called the Latter-Day Glory) when the knowledge of the Lord shall cover the earth as the waters do the sea, and that this day will appear upon the destruction of antichrist. If so, I am well convinced that Jesus will first remove all the hindrances or religious establishments, and cause all men to be free in matters of religion. When this is effected, he will say to the kings and great men of the earth, "Now see what I can do; ye have been afraid to leave the church and gospel in my hands alone, without steadying the ark by human law; but now I have taken the power and kingdom to myself, and will work for my own glory." Here let me add, that in the southern states, where there has been the greatest freedom from religious oppression, where liberty of conscience is entirely enjoyed, there has been the greatest revival of religion; which is another proof that true religion can and will prevail best where it is left entirely to Christ.